

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:	)	
	)	
UNF WEST, INC. A/K/A UNITED	)	
NATURAL FOODS, INC.	)	
	)	Case No. 21-CA-129446
	)	
Respondent	)	
	)	
and	)	
	)	
TEAMSTERS, CHAUFFEURS,	)	
WAREHOUSEMEN, INDUSTRIAL AND	)	
ALLIED WORKERS OF AMERICA,	)	
LOCAL 166, THE INTERNATIONAL	)	
BROTHERHOOD OF TEAMSTERS	)	
	)	
Charging Party	)	

**RESPONDENT'S EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE'S DECISION**

Respondent UNF West, Inc. (Respondent), by its undersigned counsel and pursuant to Rule 102.46 of the Board's Rules and Regulations, files the following Exceptions to the Decision of Administrative Law Judge ("ALJ") John J. McCarrick dated August 3, 2015<sup>1</sup> filed in the above captioned matter.

1. Respondent excepts to the ALJ's statement and/or findings that "While Aceves<sup>2</sup> was an open, union activist who passed out union authorization cards and spoke to employees about the union and attended union meetings, there is no evidence that Aceves was known to

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<sup>1</sup> Citations to the Administrative Law Judge's decision will be referenced as "ALJD" followed by the appropriate page and line numbers. References to the hearing transcript will be referenced as "Tr." followed by the appropriate page number.

<sup>2</sup> "Aceves" refers to General Counsel (GC) witness Armando Perez Aceves as that is what the ALJ called him in the Decision. *E.g.* ALJD 3, Line 18. Aceves was referred to during the hearing as Mr. Perez.

Respondent as a union supporter," as this finding is directly contradicted by the evidence in the record when considered as a whole, much of which is undisputed. ADLJ 3, Lines 23-25.

2. Respondent excepts to the ALJ's statements and/or findings related to an alleged May 9, 2014 conversation between Aceves and Consultant Juan Negroni (Negroni) because the credible evidence in the record when considered as a whole shows that the conversation never took place. ALJD 3, Lines 31 through 41.

3. Respondent excepts to the ALJ's finding that Negroni testified that "...he left the facility for his hotel no later than 3 p.m. immediately after the meeting, stopping nowhere in Respondent's facility," because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 3, Lines 44-46.

4. Respondent excepts to the ALJ's finding that Ortiz<sup>3</sup> "...testified to the contrary that the May 9, 2:15 meeting lasted an hour and a half..." because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Line 1.

5. Respondent excepts to the ALJ's finding that "Negroni denied, with extra emphasis..." that he was on the warehouse floor on May 9, 2014 because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Lines 7-8.

6. Respondent excepts to the ALJ's finding that "...labor Consultant Perez admitted she had seen such a document posted in glass cases between the lunchroom and the warehouse and also by the transportation department..." and "...in the employees' locker room" because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Lines 9 through 12.

7. Respondent excepts to the ALJ's finding that Negroni's testimony was, *inter alia*, "exaggerated and bombastic," and "had a theatrical quality that was both exaggerated and

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<sup>3</sup> This is a reference to Consultant Carlos Ortiz. ALJD 3, Line 9.

contrived," because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Lines 19-24.

8. Respondent excepts to the ALJ's finding that Negroni is not to be believed because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Lines 25-28.

9. Respondent excepts to the ALJ's finding that Aceves' testimony should be credited because it cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Lines 28-29.

10. Respondent excepts to the ALJ's application of *Bourne v. NLRB*, 332 F.2d 47, 48 (2d. Cir. 1964), *Rossmore House*, 269 NLRB 1176 (1984), aff'd. sub nom. *Hotel Employees Union Local 11 v. NLRB*, 760 F.2d 1006 (9<sup>th</sup> Cir. 1985), *Norton Audubon Hospital*, 338 NLRB 320, 320-21 (2002), and *Medcare Associates* 330 NLRB 935, 939-40 (2000) to conclude that Respondent violated Section 8(a) (1) of the Act because the ALJ misapplies the law and the conclusion reached cannot be supported by the credible evidence in the record when considered as a whole. ALJD 4, Line 23 through 5 Line 28.

11. Respondent excepts to the ALJ's finding that "Negroni's interrogation of Aceves was coercive given that Aceves was questioned by respondent's agent charged with combatting the Union's organizing campaign shortly before the election" because it cannot be supported by the credible evidence in the record when considered as a whole showing that no such conversation took place. ALJD 5, Lines 1-4.

12. Respondent excepts to the ALJ's finding that "While Aceves was a union activist there is no evidence that Aceves engaged in union activity in an open manner at the workplace or that Negroni was aware of this" because the credible and undisputed evidence in the record when

considered as a whole establishes that Respondent and Negroni were well aware that Aceves was an open union supporter. ALJD 5, Lines 4-6.

13. Respondent excepts to the ALJ's misapplication of *President Riverboat Casinos of Missouri, Inc.*, 329 NLRB 77,78 (1999) because Negroni and Respondent were well aware of Aceves' status as a union supporter. ALJD 5, Lines 7-9.

14. Respondent excepts to the ALJ's finding that "this was no casual, friendly, or joking conversation as Aceves asked Negroni if he was being interrogated and told Negroni to leave him alone" and "Rather than leave Aceves alone, after being shown the employees' rights document, Negroni made it clear that Section 7 rights did not apply at Respondent's facility and emphasized an employer's ultimate threat, that it controlled Aceves' employment" because the credible evidence in the record when considered as a whole shows that no such conversation took place. ALJD 5, Lines 8-13.

15. Respondent excepts to the ALJ's finding that "The entire conversation established that Respondent's interrogation was coercive and violated Section 8(a)(1) of the Act," relying upon *Gelita USA Inc.*, 352 NLRB 406, 406 (2008) because the credible evidence in the record when considered as a whole shows that no such conversation took place and the holding of the case is not applicable to the facts in the record of this case. ALJD p5, Lines 13-15.

16. Respondent excepts to the ALJ's reliance upon *Wellstream Corp.*, 313 NLRB 698, 706 (1994) as its holding is not applicable to the facts as established by the credible evidence in the record when considered as a whole. ALJD 5, Lines 16-21.

17. Respondent objects the ALJ's finding that "Here, after Aceves gave Negroni the document explaining employees' Section 7 rights Negroni told Armando, "This document doesn't work here, my brother" and "Who pays your check, the company or the Union" because the

credible evidence in the record when considered as a whole show that no such conversation took place. ALJD 5, Lines 23-25.

18. Respondent excepts to the ALJ's finding that "Negroni's message was clear that Section 7 rights, including the right to form a union, did not apply to Respondent and it was therefore useless for Aceves to attempt organize with his coworkers and assert their Section 7 rights to join the Union" because the credible evidence in the record when considered as a whole show that no such conversation took place and Respondent repeatedly emphasized that it respected and would allow the exercise of Section 7 rights. ALJD 5, Lines 25-27.

19. Respondent excepts to the ALJ's finding that "Negroni's statement that Aceves could not exercise his Section 7 rights violated Section 8(a)(1) of the Act" because the credible evidence in the record when considered as a whole show that no such conversation took place and Respondent repeatedly emphasized that it respected and would allow the exercise of Section 7 rights. ALJD 5, Lines 25-27.

20. Respondent excepts to the ALJ's finding that "According to Contreras, Ortiz conducted the meeting in Spanish" because the credible evidence in the record when considered as a whole show that Contreras contradicted himself when testifying about in what language the meeting was held. ALJD 5, Lines 40-41.

21. Respondent excepts to the ALJ's finding that "Ortiz began the meeting by saying that the "Union's no good" and that the Union only "want[s] the employees' money"" " because the credible evidence in the record when considered as a whole show that no such conversation took place and that the meeting did not begin as alleged by Contreras. ALJD 5, Lines 40-42.

22. Respondent excepts to the ALJ's finding that "Contreras said, in Spanish, "I have heard from the warehouse that you guys are saying that if the Union wins, the Company's going

to reduce the wages of all the employees" and that "Ortiz then said, "Lino, we put that message on the projector so everybody could see it" and further said "Lino, of course, if the Union wins, the Company could reduce your wages"" because the credible evidence in the record when considered as a whole shows that no such conversation took place and it is undisputed that the message displayed by the slide deck to which Contreras referred said, *inter alai*, that no one was authorized to tell employees that they would lose wages if the union came in, exactly the opposite of what Contreras claimed it said. ALJD 5, Lines 42-46.

23. Respondent excepts to the ALJ's findings that: "Contreras responded, "But that's illegal" and then "Ortiz then said, "Lino, who pays your salary? The Company, right? Therefore, the Company has the right to reduce your salary." Contreras responded, "Yes, if that's what you say." The credible evidence in the record when considered as a whole shows that no such conversation took place. ALJD 5, Lines 42-48 and 6, Line 1.

24. Respondent excepts to the ALJ's finding that "Respondent's employee Juan Urquiza corroborated Contreras' account of the May 16, 2014 meeting." The credible evidence in the record when considered as a whole shows Urquiza did not corroborate Contreras' testimony and instead contradicted material portions of it, and that conversations described by the ALJ never took place. ALJD 6, Lines 3-4 and ALJD 5, Lines 40 through 6, Line 9.

25. Respondent excepts to the ALJ's finding that "Contreras did not recall Ortiz reading from the slides" or "Ortiz ever telling employees at this meeting or any other meeting, that "bargaining starts form where you are, and can go, up down or stay the same" or reading from a slide that contained something to that effect" because the credible evidence in the record when considered as a whole shows that Contreras contradicted himself when testifying about what took place during the meeting on May 16, 2014. ALJD 6, Lines 12-15.

26. Respondent excepts to the ALJ's finding that "Ortiz claimed that he read the slide presentation "word for word"" and that "he said nothing other than reading the slide presentation" because this mischaracterizes the credible evidence in the record when considered as a whole and because the ALJ failed to let Ortiz testify in his native Spanish while allowing the GC's witnesses to do through a translator. ALJD 6, Lines 23-25.

27. Respondent excepts to the ALJ's findings that: "Perez said that Ortiz read the slide script word-for-word, however she admitted that Contreras asked questions during the meeting" and "She admitted that Contreras claimed, "We could get less if we vote for the union. Perez said that Ortiz said it was subject to negotiation. Perez testified that she could not remember Ortiz' exact words." ALJD 6, Lines 25-29. These findings mischaracterize and cannot be supported by the credible evidence in the record when considered as a whole.

28. Respondent excepts to the ALJ's finding that "Urquiza had little recollection of the slides' contents" because the credible evidence in the record when considered as a whole shows that Urquiza contradicted himself when testifying about what took place during the meeting on May 16, 2014. ALJD 6, lines 11-12.

29. Respondent excepts to the ALJ's findings that "I credit Contreras and Urquiza" because the finding fails to consider the record as a whole, ignores completely dispositive evidence that conclusively supports exactly the opposite result, and thus the credibility determination could not and should not have been made unless and until the record was considered as a whole. ALJD 7, Line 1.

30. Respondent excepts to the ALJ's findings that "I credit Contreras and Urquiza" because the finding cannot be supported by credible evidence in the record when considered as a whole. ALJD 7, Line 1.

31. Respondent excepts to the ALJ's findings that "The Board has long held that an employer may not tell employees that the consequences of unionization may result in a cut in wages. *President Riverboat Casinos of Missouri, Inc.*, 329 NLRB 77, 77 (1999). Such a pronouncement is an implied threat because the statement, without reference to the bargaining process, suggests that wages might be reduced as a result of a vote for unionization. Id." This is an inaccurate statement of law and is not applicable to the facts established by the evidence in the record when considered as a whole.

32. Respondent objects to the finding that Ortiz' statement violated Section 8(a)(1) of the Act because the bases upon which this conclusion is made cannot be supported by and is refuted by accurate statements of law and the credible evidence in the record when considered as a whole. ALJD 7, Line 21 and Lines 15 through 20.

33. Respondent objects to the finding that Negroni had a conversation with Contreras on May 22, 2014 as described in the Decision because the credible evidence in the record when considered as a whole shows that no such conversation took place. ALJD 7, Lines 25 -38.

34. Respondent objects to the finding that Anna Bravo's testimony was not credited as the credible evidence in the record when considered as a whole shows that she was a credible witness. ALJD 7, Line 43 through 8, line 9.

35. Respondent objects to the ALJ's findings that "Like Negroni's interrogation of Aceves, his interrogation of Contreras violated Section 8(a)(1) of the Act" because the credible evidence in the record when considered as a whole show that no such conversation took place and proper application of controlling law shows that no violation took place regardless of how the record is interpreted. ALJD 8, Lines 18-19.



36. Respondent objects to the ALJ's findings that "..., Negroni was not satisfied with mere interrogation about how Contreras felt about the Union and what the Union was promising" and "After Contreras defended the Union, Negroni emphasized the Respondent would not want to hear such statements, implying there would be adverse consequences" " because the credible evidence in the record when considered as a whole shows that no such conversation took place. ALJD 8, Lines 22-25.

37. Respondent objects to the ALJ's findings that the alleged conversation between Negroni and Contreras that supposedly occurred on May 22, 2014 "...was clearly coercive and the interrogation violated Section 8(a)(1) of the Act" because the credible evidence in the record when considered as a whole shows that no such conversation took place and proper application of controlling law shows that no violation took place regardless of how the record is interpreted. ALJD 8, Lines 25-26.

38. Respondent objects to the ALJ's findings that "As discussed above, in Negroni's statement to Aceves concerning the futility of his union activity, his similar statement to Contreras violated Section 8(a)(1) of the Act" " because the credible evidence in the record when considered as a whole shows that no such conversation took place and proper application of controlling law shows that no violation took place regardless of how the record is interpreted. ALJD 8, Lines 28-29.

39. Respondent objects to the ALJ's findings that "Like Aceves, Contreras gave Negroni the same document "Employee Rights Under the National Labor Relations Act" and "Negroni looked at the document and said, "You know what, this is useless" and "The Company has its own policies"" because the credible evidence in the record when considered as a whole shows that no such conversation took place. ALJD 8, Lines 28-33.

40. Respondent objects to the ALJ's findings that "As with Aceves, Negroni's message to Contreras was that it was futile for him and his co-workers to assert their Section 7 rights to join or support the Union and violated Section 7 of the Act" because the findings are inconsistent with applicable law and cannot be supported by the credible record evidence when considered as a whole. ALJD 8, Lines 33-35.

41. Respondent objects to the ALJ's failure to allow Carlos Ortiz to testify in his native language of Spanish while allowing the GC's witnesses to do so.

42. Respondent objects to the ALJ's failure to allow Mr. Andrew Ivey to testify about his efforts to collect a petition signed by approximately 180 of the 230 associates in the voting unit in Case No. 21-RC-126725 asking Region 21 of the NLRB and Teamsters Local 166 to stop blocking their efforts to exercise their right protected by Section 7 of the Act to reject representation by Teamsters Local 166 as well as the failure to admit that petition into evidence. Tr. 205-09.

43. Respondent objects to the failure of the ALJ to allow testimony from UNFI associates Jerome Dowdy, Howard Shelton, Joseph Elder, and Pete Manrique to testify about why they signed Mr. Ivey's petition and the fact they never heard either of Messrs. Ortiz or Negroni make any statements like those alleged by the General Counsel. Tr. 208-14.

44. Respondent excepts to each and every one of the ALJ's conclusions of law because they are contrary to applicable law and cannot be supported by the credible record evidence when considered as a whole. ALJD 8 Line 37 through 9 Line 1.

45. Respondent excepts to each and every one of ALJ's proposed remedies because they are inconsistent with applicable law, are not supported by the credible evidence when considered as a whole, do not properly and fully consider the history of this matter as set forth in

the record, were not requested as relief in the Complaint, and the record evidence provides no grounds for any extraordinary remedies as proposed by the ALJ. ALJD 9, Lines 4-41.

46. Respondent excepts to the contents of the ALJ's proposed Order in its entirety because it is inconsistent with applicable law, is not supported by the credible evidence when considered as a whole, proposes relief that is not requested in the Complaint, and the record evidence provides no grounds for any extraordinary remedies as proposed by the ALJ. ALJD 9, Line 45 through 11 Line 4.

WHEREFORE, for the reasons stated herein and in Respondents' Brief in Support of Exceptions filed contemporaneously herewith and incorporated herein by reference, Respondent requests that the Board reject the ALJ's findings and recommended Order and dismiss the Complaint in its entirety.

Dated: August 31, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certified that a copy of the foregoing document in the above-captioned case has been electronically filed, served by email and/or sent by overnight delivery on the following persons this 31<sup>st</sup> day of August, 2015:

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